

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4164 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHAILY ENGINEERING PLASTICS LTD

Versus

UNION OF INDIA

Appearance:

MR MIHIR H JOSHI for Petitioner

MR JAYANT PATEL for Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 26/05/98

ORAL JUDGEMENT

Rule. Mr. Jayant Patel, learned Additional Standing Counsel appearing for the respondents waives service of rule. On the facts and in the circumstances of the case, the matter is taken up for final hearing today.

2. Petitioner herein is the Company duly registered under the Companies Act, 1956. A show cause notice dated

24th December, 1996 was issued to the petitioner Co. calling upon it to show cause why MODVAT Credit amount of Rs. 8,77,200/- should not be disallowed and recovered under Rule 571 of the Central Excise Rules. After the notice was issued, the petitioner filed written statement. On January 28, 1998, respondent No. 3 confirmed the demand of the said amount. Being aggrieved by the said confirmatory order, on 1st April, 1998, the petitioner filed appeal before the respondent No. 2. Alongwith the said appeal, petitioner also preferred an application for stay. Respondent No. 2 has yet not heard the appeal and the application for stay. Meanwhile, respondent No. 3 and 4 were pressing much for recovery even by resorting to coercive measures. The petitioner, therefore, requested the respondent No. 2 to hear the appeal and application for stay but as respondent No. 2 paid no attention, this petition has been filed for necessary direction to respondent No. 2 to hear the appeal at the earliest and dispose of the same on merits.

3. So long as the application for stay is pending before respondent No. 2, it would not be just and proper on the part of respondents nos. 3 and 4 to resort to coercive measures and recover the amount. In view of such facts and circumstances of the case, respondent No. 2 is required to be directed to disposed of the application for stay at the earliest. Accordingly, respondent No. 2 is directed to dispose of the application for stay preferred by the petitioner in an appeal filed by the petitioner before it within one month from the date of this order. Till then, respondents nos. 3 and 4 shall not resort to coercive measures for realization of the amount. Rule is accordingly made absolute with no order as to costs.

Vyas